

# National FaxList

RECEIVED

P.O. Box 9777  
Trenton, NJ 08650  
Phone: (609) 584-0047  
Fax: (609) 584-0048

MAY 26 1992

FCC MAIL BRANCH

To: Federal Communications Commission  
Office of the Secretary  
1919 M Street Room 222  
Washington, DC 20554

Date: 5/25/92

ORIGINAL  
FILE

Submitted by: Donald M. McGrath  
President  
National FaxList

RECEIVED

MAY 26 1992

Re: FORMAL COMMENT - Docket No. 92-90

Federal Communications Commission  
Office of the Secretary

## Background

National FaxList is a business located in Hamilton Square, New Jersey. It was established in 1988 by Don McGrath. It's sole function is the development and maintenance of a database of fax numbers for businesses around the country.

With a current count of slightly more than 500,000 business records, each database record consists of a company name, address, outside phone number, fax number, chief executive, employee number and business classification (SIC code).

To the best of our knowledge, this database of fax numbers is the largest commercially available collection of fax numbers in the country and is currently growing at a rate of approximately 30,000 records per month. Similar to mailing list databases, the records are selectable in groups by either business and/or geographic criteria .

Typical clients acquire the customized lists to reach targeted business audiences via fax. Among our clients has been MacDonalds, Marriott and Hilton hotels, the United Nations (UNESCO), Journal Graphics, radio and TV stations, trade associations and numerous suppliers and distributors of products and services. One of our clients was a US Senator.

It has been the policy of National FaxList to delete the record of any business from our database if the business requests that we do so. We request that our clients inform us of any fax users that complain about receiving a fax.

National FaxList receives most of clients and prospective sales through references from the major common carriers which offer enhanced fax (or fax broadcasting service). National FaxList employs 11 full and part-time people.

No. of Copies Rec'd 0110  
List A B C D E

## Comment

The Telephone Consumer Protection Act of 1991 prohibits the transmission of unsolicited advertisements to a fax machine.

The fax broadcasting industry has grown tremendously during the past several years as the number of installed fax machines has increased dramatically. Hundreds of companies are involved in the industry ranging in size from the large common communications carriers (AT&T, Sprint & MCI) and fax board manufacturers to small entrepreneurial businesses. The industry currently employs several thousand people and is projected to expand rapidly during the balance of the decade. A prohibition against unsolicited faxes will severely damage this industry for the 90's.

The effectiveness of fax as a promotional medium is now well established. Utilizing sophisticated computer graphics, the latest in scanning technology and the halftones capability of most recent fax units, the professional quality and exceptional detail of the materials which can be transmitted is impressive. Combined with the ability to target very specific markets, fax marketing produces a high number of positive responses which lead to sales.

From our experience, about .3% (or 3 out of 1,000) of the recipients of unsolicited faxes complain about receiving the faxes and/or request that their fax record be deleted the sender's list (or our database). The most frequently mentioned reasons they cite for their complaints are their cost of the fax paper, the tie-up of their telephone lines and the "irrelevance" of the promotional material that was faxed to them.

The average cost of fax paper is less than .03 per page. While this cost must be absorbed by the receiver, even for those who claim to receive several unsolicited faxes per week, the cost is insignificant.

Most of the unsolicited faxes are transmitted during the off-peak hours (11:00 PM - 8:00 AM). The reason for this is both economic (the phone calls cost less) and the desire not to tie up the fax lines. Since the average fax transmission is less than one minute, the likelihood that it would interfere with the receipt of another incoming fax during the night is quite low. Additionally, since virtually all fax machines have automatic retry functions in the event of busy signals, the second fax would be transmitted a few moments later.

As to the argument of the irrelevance of the unsolicited fax to the recipient, most firms that transmit promotional faxes target their audience very specifically. Those that do not usually don't receive the anticipated positive results and will normally stop sending such faxes. In these cases, the market itself will solve the problem.

99.7% (or 997 out of 1,000) of the recipients of unsolicited faxes do not complain to our clients or to National FaxList and presumably are not opposed to receiving them. Additionally, since most companies that use the fax medium to promote a product or service report a 4-6% positive responsive rate, it's reasonable to conclude that many recipients (40 to 60 out of 1,000) welcome unsolicited faxes.

When the number of recipients in favor of unsolicited faxes are contrasted to the relative few (3 out of 1,000) who complain about them, it would seem that a prohibition would serve fewer interests.

### Proposed Solution

Clearly, there are occasional abuses related to unsolicited faxing. Multiple copies of the same unsolicited fax will be inadvertently sent to the same number. A multiple page fax will be transmitted during the daytime business hours that will tie up a fax line. A fax will be transmitted promoting a pyramid scheme or other fraudulent product or service. These abuses should be prohibited. There seems little merit however in prohibiting all unsolicited faxes when only a very small portion constitute abuses and should be eliminated.

### Enforcement

There are approximately 4 million fax machines installed in the United States and this amount is projected to grow to 35-40 million units by the end of the decade. Based upon the results which unsolicited fax advertising produces and the number of fax units available, the potential violations of the TCPA could be staggering and the enforcement of the regulation could be next to impossible.

The damage associated with the transmission of a single unsolicited fax advertisement is the cost of the fax paper (at less than .03 per page) and the tie-up of a telephone line (for an average of 45 seconds and typically in the middle of the night). Any penalty that might be assessed to the sender of such an unsolicited fax would be highly disproportionate to the actual damage.

The cost of enforcing this unsolicited fax restriction (fielding and investigating potentially millions of complaints, assessing and collecting penalties, etc.) would be staggering. Since those interstate violations that would fall under federal enforcement would likely involve parties separated by broad distances across different time zones, enforcement would be impractical as well.

In weighing the high cost of enforcing this regulation against the low value of damage caused by a violation, it doesn't make sense to try to enforce it as it stands.

## Proposal

The spirit of this regulation was to eliminate or reduce the abuses of unsolicited fax advertising (as referenced above) and not to restrict parties from sending such faxes to parties who welcome their receipt. With this intent in mind, it would seem more prudent to limit the scope of this prohibition to the cover only the abuses of unsolicited fax advertising and to establish a mechanism enabling fax advertisers to avoid such abuses.

As stated above, the abuses of fax advertising are:

1. Sending an unsolicited fax advertisement to a party that has expressed a desire not to receive one.
2. Sending the same unsolicited fax advertisement to a party on more than one occasion.
3. Sending an unsolicited fax advertisement that exceeds one standard page (or two pages if a cover page is included.)
4. Sending an unsolicited fax advertisement to a recipient during its prime business hours.
5. Sending an unsolicited fax advertisement that does not identify the sending party.
6. Sending an unsolicited fax advertisement that promotes a product or service that is illegal.

It is the intent of this regulation to prohibit these abuses of fax advertising (and others that can be identified).

To reduce the most common abuse of fax advertising, sending a fax to a party that doesn't wish to receive it, section 28 of the rulemaking notice offers a mechanism for the telemarketing and auto dialing industries that could be set up to eliminate most of the problems associated with fax advertising. This mechanism, the establishment of a single national database that would compile and maintain a list of fax numbers from parties that do not wish to receive unsolicited faxes, should be established for the fax advertising industry.

This national database would be set up by an outside firm at no cost to the government or to any party that wishes to be included in the database. The costs to maintain this database would be recouped from the sale of this list to fax advertisers (or the fax transmission firms) that would enable them to screen out the fax numbers of the parties who do not wish to receive the unsolicited faxes. The sale of all or part of this list would be priced on a per number basis for one-time users or on a fee basis for subscription users. The data would be made available electronically on floppy disk or on printed lists.

National FaxList already maintains a database of parties (and their fax numbers) which have requested to be removed from our list of 500,000 fax users. (We naturally remove them from our master list as well.)

Without much difficulty, this database and its hardware requirements could be modified to accommodate the likely expansion if it were adopted as the industry master list. If additional funds were required for such expansion, they would be obtained from non-government sources.

The data from this database would be sold on a per record basis for one-time users or subscription fee basis for those parties requiring periodic updates. Costs would be set at \$.05 per record (with a minimum order cost of \$125) for those buying on a per record basis and \$.01 per record plus an update fee for those requiring periodic subscription updates. The update fees would be \$125 per month or \$250 per quarter. A service to identify the numbers from this database that match up against individual lists would be available and priced on a customized basis depending upon the size of the list and the format submitted.

To insure compliance with this database and awareness of the regulations prohibiting the abuses identified above, the FCC would require that each of the major fax transmission companies and the suppliers of fax transmission boards for PC's notify their customers in writing as to the existence of this database. The FCC might also consider requiring the fax machine suppliers include notice of same with each new fax unit sold.